

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

18 AUG 1975

Mr. James M. Frey  
Assistant Director for Legislative Reference  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Frey:

Enclosed is a proposed report to Chairman Price, House Committee on Armed Services, in response to a request for our recommendations on H.R. 343, a bill "To amend the National Security Act of 1947 and the Central Intelligence Agency Act of 1949 in order to prohibit certain activities by the Central Intelligence Agency and to limit certain other activities by such Agency, and for other purposes."

Advice is requested as to whether there is any objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

**SIGNED**

George L. Cary  
Legislative Counsel

Enclosure

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Honorable Melvin Price, Chairman  
Committee on Armed Services  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for the views and recommendations of the Central Intelligence Agency on H.R. 343. This bill would make numerous changes to the National Security Act of 1947 [50 U.S.C. 403], and to the Central Intelligence Agency Act of 1949 [50 U.S.C. 403(a) et. seq.]. The bill would place restrictions on the offices of Director and Deputy Director of Central Intelligence, prohibit covert action while regulating other activities undertaken by CIA pursuant to section 102(d)(5) of the Act, supplement the present statutory directive to correlate, evaluate, and disseminate intelligence, add new congressional reporting requirements, and add new limitations on CIA activities within the United States. These proposed changes are discussed individually below.

Limitations on the Offices of Director and Deputy Director

Section 2 of the bill limits a Director of Central Intelligence (DCI) to no more than eight years in office, and provides that the offices of Director and Deputy Director of Central Intelligence (DDCI) may not be simultaneously occupied by individuals who have been in the employ of the Agency within five years prior to nomination. I do not oppose a statutory term of office, in the eight to ten-year range, for the Director. The Commission on CIA Activities within the United States recommended, in its June 1975 report, that the Director serve no more than ten years in office.

Section 102(a) of the 1947 Act now prohibits the simultaneous incumbency of the positions of Director and Deputy Director by commissioned officers of the armed services, reflecting the view that the Agency's foreign intelligence product must be independent of policy and departmental influence. Since the establishment of the Agency in 1947, the positions of Director and Deputy Director of Central Intelligence have never been simultaneously occupied by persons with prior Agency employment. One of the positions has always



been held by a commissioned officer of the Armed Forces, with no prior Agency employment. (Former DDCI Lieutenant General Robert Cushman was detailed to the Agency in the early 1950's as a Marine Corp Lieutenant Colonel. He served as DDCI from May 1969 through December 1971.) However, because CIA does have specialized disciplines and distinctive management problems, I believe that the President and the Senate should have the opportunity to appoint and confirm those individuals who by training, dedication and experience may be best suited for the two top management positions in the intelligence community, regardless of past affiliation.

#### Limit CIA to Foreign Intelligence

Subsections (3), (4), (6), and (7) of section 3 would add the word "foreign" before the word "intelligence" in the Act whenever it refers to the activities authorized to be undertaken by the Central Intelligence Agency. I fully support this change. I have publicly stated my view that the Agency's charter lies solely in the foreign intelligence field, and have attempted to insure that all CIA activities are so circumscribed. However, I believe it advisable to recognize this limitation in the National Security Act.

#### Develop Plans, Policies, and Regulations

Subsection (5) of section 3 would add the requirement that the Agency develop plans, policies, and regulations to implement the directive in section 102(d)(3) of the Act to correlate, evaluate, and disseminate foreign intelligence, and report any violation of these plans, policies, or regulations to the Attorney General for appropriate action. It is unclear what purpose this amendment would serve. CIA's basic task is to collect, correlate, and evaluate intelligence, and the Agency has done so successfully since its inception without a statutory directive to develop plans, policies, or regulations in support thereof. In addition, policies and regulations now exist for the dissemination of intelligence to appropriate parts of the Federal Government. Further, it is unlikely that the Attorney General would have an interest in a violation of such plans, policies, or regulations. Even if intentional, violations would not amount to a criminal offense, and should merely be the subject of internal Agency administrative action.

### Regulation of Section 102(d)(5) Activities

Section 3(7) would regulate activities undertaken by this Agency pursuant to section 102(d)(5) of the Act, by requiring the President to specifically authorize such an activity in writing and report on such activities to the Congress, in accordance with procedures to be established by the Congress. A similar requirement was adopted by the 93rd Congress as section 32 of the Foreign Assistance Act of 1974 (P. L. 93-559). Under that law, no funds may be appropriated for any CIA operation in foreign countries, except purely intelligence gathering operations, unless the President finds that a proposed operation is important to the national security, and reports his finding to the appropriate committees of the Congress. Six committees of Congress, the Appropriations and Armed Services Committees of both Houses and the Senate Committee on Foreign Relations and the House Committee on International Relations, are now receiving these briefings. I believe that law completely accomplishes the purposes intended by section 3(7) of H.R. 343.

### Abolish Covert Actions

Subsection (8) of section 3 would prohibit CIA from planning or implementing directly or indirectly certain covert actions. Similarly-intended proposals were considered and overwhelmingly rejected by both Houses of the 93rd Congress. The House voted 291-108 on September 24, 1974, against an amendment to the Fiscal 1975 Continuing Appropriations Resolution (H.J. Res. 1131) to deny funds to CIA for the purpose of undermining the government of any foreign country. The Senate rejected, by a vote of 68-17 on October 2, 1974, an attempt to amend the Foreign Assistance Act to abolish all CIA covert actions (amendment number 1922).

These votes clearly illustrate the view of the 93rd Congress that the U.S. Government must maintain a covert action capability. Although the covert actions of this Agency now require only a small part of our total expenditures, I agree with Congress that our Government must keep a covert action capability in order to be prepared for any eventuality. International situations may well arise to which U.S. policy-makers feel compelled to respond in some manner. It could be a crippling mistake to deprive our Government of the possibility of even a modest covert action response to unforeseen situations, leaving no possible alternative between a diplomatic protest and the commitment of our armed forces.

### Congressional Reporting

Section 4 of H.R. 343 would add two new sections to the Central Intelligence Agency Act. Proposed section 11 of the Act would require the Agency to keep the House Committees on Armed Services and Foreign Affairs (now International Relations) and Senate Committees on Armed Services and Foreign Relations fully and currently informed regarding intelligence information collected by CIA, and to provide full and current analysis of such information, by means of special reports prepared at the request of these committees.

I believe this Agency has a responsibility to share its intelligence with the legislative branch. By doing so, we assist those in Congress who share in the decision making process under our Constitution, and make our intelligence investment of maximum service to the nation as a whole. We have, in fact, consistently made ourselves available to a number of congressional committees for substantive intelligence briefings. The principal recipients of these briefings have been the four committees mentioned in proposed section 11, plus the two Appropriations, House Science and Astronautics, and Senate Aeronautical and Space Sciences Committees, the Joint Committee on Atomic Energy and the Joint Economic Committee. I believe this arrangement has been satisfactory from the standpoint of the committees, and I intend to maintain it. However, I am concerned that proposed section 11 goes beyond sharing our intelligence with the Congress, and would subject the Agency to a degree of direction by several congressional committees. This arrangement could lead to conflicts of priority and interest between our responsibilities to the President and National Security Council on the one hand, and the committees on the other, or indeed between the committees themselves. Moreover, I believe section 11 raises constitutional separation of powers questions.

### Further Limit CIA Domestic Activities

Proposed section 12 attempts to further limit CIA domestic activities, now restricted by the proviso in section 102(d)(3) of the National Security Act prohibiting police, subpoena, law-enforcement powers, or internal-security functions. Section 12 would preclude the Agency from (1) law enforcement, internal security, or police-type operations or activities in the United States; (2) providing assistance to any Federal, state, or local

agency or employee engaged in police-type, law enforcement, or internal security functions or activities in the United States, without the advance approval of the CIA congressional oversight committees; or (3) participating in an illegal activity within the United States.

Although the focus of CIA is on foreign intelligence, the Agency does legitimately conduct certain activities in the United States. These include screening applicants for employment; interviewing American citizens who willingly share foreign intelligence information in their possession with their Government; collecting foreign intelligence from foreigners; establishing support structures necessary to foreign intelligence activities abroad; and providing assistance to the Federal Bureau of Investigation for its counterintelligence operations against foreigners. In the latter activity, CIA does not participate in the operation itself. Any changes in the National Security Act must be sufficiently precise so as not to curtail these important activities. Much foreign intelligence information is available in the United States; common sense dictates that we should not be forced to gather information abroad, when we can gather it in this country at no risk, and at little cost.

I believe the language of proposed section 12 is so broad as to severely undermine legitimate CIA activities in this country. The prohibition in section 12(1) against undefined "police-type" operations or activities, for example, could be interpreted to preclude essential security investigations on job applicants, or even preliminary investigations of CIA employees suspected of foreign intelligence connections.

Although the Federal Bureau of Investigation has primary authority for counterintelligence, within the United States, a close working relationship between the FBI and CIA is essential for the overall success of this activity. Counterintelligence information collected overseas by CIA is routinely channeled to the FBI. This transfer of information would surely be considered "assistance of any kind," limited by proposed section 12(2). Thus, section 12(2) would severely restrict our nation's counterintelligence program. Moreover, I believe the requirement of prior approval of the oversight committees of the Congress before specific acts are taken would raise serious constitution separation of powers questions.

Finally, proposed section 12(3) states that the Agency shall not "participate, directly or indirectly, in any illegal activity within the United States." I believe this section is inappropriate and unnecessary. All Agency employees are well aware that CIA must operate within the confines of the law.

Mr. Chairman, I believe a few activities conducted by CIA during its twenty-eight year history were improper. These actions were undertaken, however, in the belief that they fell within the statutory intelligence mission, or with the Director's responsibility to protect Intelligence Sources and Methods from unauthorized disclosure. Changes in the National Security Act are desirable so that the permissible areas of CIA domestic activity will be more clearly delineated, and future mistakes can be avoided. I pledge my cooperation with you, as I have with the Chairmen of the Select Committees now investigating CIA activities, to help establish new guidelines which will protect the constitutional rights of American citizens, while preserving the Agency's capability to fulfill its responsibilities to the nation's policy-makers. However, I believe H.R. 343, by severely hampering this nation's intelligence effort, would not meet these dual objectives, and I oppose its enactment.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby  
Director

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